

2. On September 21, 2010 Plaintiff filed its First Amended Original Petition. In its First Amended Original Petition it adds Tan Biz, LLC as a defendant. Plaintiff also asserts new claims and causes of action.

3. On October 8, 2010, Tan Biz, LLC agreed to waiver formal service of process.

4. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served upon on or more of the Defendants in the state court action are attached hereto as Exhibit 1. Also included in Exhibit 1 is a copy of the state court docket sheet.

5. Venue is proper in this district pursuant to 28 U.S.C. § 124(d)(1) because this is the “district and division embracing the place where such action is pending.” *See* 28 U.S.C. § 1441(a). No previous application has been made for the relief requested herein.

I. ALLEGATIONS AND REQUESTED RELIEF

6. Plaintiff globally alleges that:

- a. “Defendants use ultraviolet lamps¹ for tanning to provide tanning services to consumers. Ultraviolet lamps for tanning are classified in 21 C.F.R. §878.4635 (‘ultraviolet lamp for tanning is a device...intended to...tan the skin.’) and are solely classified for tanning the skin, nothing more. The Federal Food & Drug Administration (“FDA”) classifies devices based on the intended use, as presented by the device manufacturer.” Plaintiff’s First Amended Original Petition at para. 9.2.
- b. “The FDA is solely responsible for classifying and approving devices after they determine whether they are safe and effective for their stated intended uses. The State, its agencies, and its courts cannot approve or authorize use of a device for an intended use different from that authorized by FDA.² Therefore, ultraviolet lamps for

¹ Plaintiff’s allege in footnote 1 that “By classification, ultraviolet lamps that produce ultraviolet radiation within a specific limit (21 C.F.R. §1040.20(11)) are intended for use in any sunlamp product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the human body to induce skin tanning (21 C.F.R. §1040.20(0)).”

² In footnote 2 Plaintiff alleges: “Section 521 of the Federal Food, Drug, and Cosmetic Act (‘FFDCA’), 21 U.S.C. §360k(a), prohibits a state from establishing or continuing in effect any requirement (1) which is different from, or in addition to any requirement applicable under the FFDCA to the device, and (2) which relates to the safety or effectiveness of the device to any other matter included in a requirement applicable to the device under the FFDCA.”

tanning are limited to the intended use of tanning the skin.” Plaintiff’s First Amended Original Petition at para. 9.3.

- c. “Defendants’ tanning devices have **not** been approved by the FDA for either delivering doses of vitamin D or reducing risk of cancer. Defendants cannot legally make claims of delivering doses of vitamin D or reducing risk of cancer as these claims change the intended use of the devices from the FDA approved use for tanning of the skin. Consequently, Defendants cannot legally use or advertise the use of their tanning devices for any purpose other than tanning the skin.” (emphasis in original). Plaintiff’s First Amended Original Petition at para. 9.8.

II. FEDERAL QUESTION JURISDICTION

7. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §1331 (federal question jurisdiction). Further, Plaintiffs’ state law claims implicate significant federal issues under the FFDCA, federal preemption by the FDA and FTC³, deprivation of the Defendants’ rights, privileges, and immunities under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. This Court, therefore, has subject-matter jurisdiction over Plaintiffs’ state-law claims arising from the same facts.

III. FULFILLMENT OF PROCEDURAL REQUIREMENTS

8. This Notice of Removal is timely under 28 U.S.C. § 1446(b).

³ For example, in January 2010 the FTC settled its investigation of the Indoor Tanning Association’s representations regarding the body’s production of vitamin D as a biological result of the utilization of sun tanning beds. The federal government required no payment by the Indoor Tanning Association and agreed that the Indoor Tanning Association could indeed reference the body’s production of vitamin D as a biological result of the utilization of sun tanning beds in its advertising but that:

“...in the event that advertising for any covered product or service makes any representation, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that exposure to ultraviolet radiation produces vitamin D in the body, or otherwise about the effectiveness or usefulness of such product for generation of vitamin D, the required disclosure shall be as follows:

NOTICE: You do not need to become tan for your skin to make vitamin D. Exposure to ultraviolet radiation may increase the likelihood of developing skin cancer and can cause serious eye injury.”

See <http://www.ftc.gov/opa/2010/01/tanning.shtm> (last visited October 21, 2010).

9. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly file a written notice of this removal with the clerk of the state court. Defendants will also serve Plaintiff's counsel with a true and correct copy of this Notice of Removal, in accordance with 28 U.S.C. § 1446(d).

10. In filing this Notice of Removal, Defendants do not waive either any defenses or arguments available to it in this action, or their right to challenge any causes of action, arguments, or allegations proposed by Plaintiff.

11. Plaintiffs demanded a jury in the state court action.

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

By: /s/ Edward D. Burbach
Edward D. Burbach, Attorney in Charge
State Bar No. 03355250
GARDERE WYNNE SEWELL LLP
600 Congress Avenue, Suite 3000
Austin, Texas 78701
ph: (512) 542-7070
fax: (512) 542-7270

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been served upon all counsel of record via first class mail and via facsimile transmission, on this the 21st day of October, 2010.

Via Facsimile 214.969.7615 and First Class Mail
Jodie Scivetti
Assistant Attorney General
Joyce Wein Iliya
Assistant Attorney General
Consumer Protection & Public Health Division
1412 Main Street, Suite 810
Dallas, TX 75202

/s/ Edward D. Burbach
Edward D. Burbach

AUSTIN 46219v.1

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Travis County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Jodie Scivetti, Consumer Protection Division & Public Health, Office of
Attorney General, 1412 Main Street #810, Dallas, TX 75202

DEFENDANTS

County of Residence of First Listed Defendant Harris County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)
Edward D. Burbach, Gardere Wynne Sewell LLP, 600 Congress
Avenue, Suite 3000, Austin, Texas 78701; (512) 542-7070

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC §1331 - 1441, First and Fourteenth Amendments to US Constitution and 42 USC §1983

Brief description of cause:

State attempt to enforce alleged violations of federal and state law.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

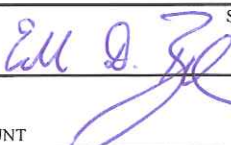
JUDGE

DOCKET NUMBER

DATE

10/21/2010

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Supplement to JS 44 Civil Cover Sheet
Cases Removed from State District Court

This form must be filed with the Clerk's Office no later than the **first business day** following the filing of the Notice of Removal. Additional sheets may be used as necessary.

The attorney of record for the removing party **MUST** sign this form.

STATE COURT INFORMATION:

1. Please identify the court from which the case is being removed; the case number; and the complete style of the case.

The State of Texas v. Darque Tan, LLC; Segler Enterprises Ltd.; Robbie Segler; Monica Jones; and Jason Jones
Cause No. D-1-GV-08-002596

2. Was jury demand made in State Court? Yes ☒ No ☐

If yes, by which party and on what date?

The State of Texas

Party Name

Nov 10, 2008

Date

STATE COURT INFORMATION:

1. List all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

The State of Texas

Attorney of Record:

Jodie Scivetti, Consumer Protection & Public Health, Office of the Attorney General, 1412 Main Street, Suite 810, Dallas, Texas 75202; (214) 463-2185

Darque Tan, LLC

Segler Enterprises Ltd.

Tan Biz, LLC

Robbie Segler

Monica Jones

Jason Jones

Attorney of Record:

Edward D. Burbach, Gardere Wynne Sewell LLP, 600 Congress Avenue, Suite 3000, Austin, Texas 78701; (512) 542-7070

2. List all parties that have not been served at the time of the removal, and the reason(s) for non-service.

3. List all parties that have been non-suited, dismissed, or terminated, and the reason(s) for their removal from the case.

COUNTERCLAIMS, CROSS-CLAIMS, and/or THIRD-PARTY CLAIMS:

1. List separately each counterclaim, cross-claim, or third-party claim still remaining in the case and designate the nature of each such claim. For each counterclaim, cross-claim, or third-party claim, include all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

VERIFICATION:



Attorney for Removing Party

10/21/2010

Date

Defendants Darque Tan, LLC et al.

Party/Parties

EXHIBIT A

Filed
08 November 10 A10:08
Amalia Rodriguez-Mendoza
District Clerk
Travis District

D-1-GV-08-002596

NO. _____

THE STATE OF TEXAS,

Plaintiff

v.

DARQUE TAN, LLC; SEGLER
ENTERPRISES LTD.; ROBBIE
SEGLER; MONICA JONES; and JASON
JONES,

Defendants.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

201ST
____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR
PERMANENT INJUNCTION**

TO THE HONORABLE DISTRICT JUDGE:

COMES NOW, the STATE OF TEXAS (Plaintiff), acting by and through the Attorney General of Texas, GREG ABBOTT, and on behalf of the Texas Department of State Health Services Commissioner, DAVID L. LAKEY, M.D., complaining of DARQUE TAN, LLC; SEGLER ENTERPRISES LTD.; ROBBIE SEGLER; MONICA JONES; and JASON JONES, (Defendants). For cause of action, the State respectfully shows the following:

I. DISCOVERY CONTROL PLAN

1.1 The discovery in this case is intended to be conducted under Level 2 pursuant to Tex. R. Civ. P. 190.3.

II. JURISDICTION

2.1 This action is brought by Attorney General GREG ABBOTT, through his Consumer Protection & Public Health Division, in the name of the State of Texas and in the public interest

State v. Darque Tan, LLC, et al.

Plaintiff's Original Petition and Application for Permanent Injunction

under the authority granted him by section 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§17.41 - 17.63 ("DTPA"), upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, DTPA sections 17.46(a) and (b).

2.2 This action is further brought by Attorney General GREG ABBOTT on behalf of the Texas Department of State Health Services Commissioner, DAVID L. LAKEY, M.D., upon the ground that Defendants have violated the Texas Health & Safety Code and referred the case to the Office of the Attorney General. See TEX. HEALTH & SAFETY CODE §§ 145.0121, 431.047, 431.0585 (Vernon 2001).

III. DEFENDANTS

3.1 Defendant **DARQUE TAN, LLC** is a Texas corporation with headquarters in Houston, Texas. Darque Tan, LLC is the General Partner of Segler Enterprises, LTD. It may be served through its **Registered Agent: Nicholas J. Lanza, 5177 Richmond, Suite 850, Houston, Texas 77056. SERVICE OF PROCESS IS HEREBY REQUESTED.**

3.2 Defendant **SEGLER ENTERPRISES, LTD.** is a Texas corporation d/b/a Darque Tan, with its headquarters in Houston, Texas. It may be served through its **Registered Agent: Nicholas J. Lanza, 5177 Richmond, Suite 850, Houston, Texas 77056. SERVICE OF PROCESS IS HEREBY REQUESTED.**

3.3 Defendant **ROBBIE SEGLER** is the Director, President, and Secretary of Darque Tan, LLC, and resides in Texas. He may be served at 5407 China Doll, Houston, Texas 77041.

SERVICE OF PROCESS IS HEREBY REQUESTED.

3.4 Defendant **MONICA JONES** is an individual residing in Texas and owns at least eight Darque Tan facilities in San Antonio, Texas. Monica Jones may be served at: 5002 Roundtable, San Antonio, Texas 78218. **SERVICE OF PROCESS IS HEREBY REQUESTED.**

3.5 Defendant **JASON JONES** is an individual residing in Texas and owns at least eight Darque Tan facilities in San Antonio, Texas. Jason Jones may be served at: 5002 Roundtable, San Antonio, Texas 78218. **SERVICE OF PROCESS IS HEREBY REQUESTED.**

IV. VENUE

4.1 Under Texas Health & Safety Code sections 145.0121(d) and 431.0585(d), venue is proper in Travis County, Texas.

V. PUBLIC INTEREST

5.1 Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe Defendants have caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. The Consumer Protection & Public Health Division of the Office of the Attorney General believes that these proceedings are in the public interest.

VI. TRADE AND COMMERCE

6.1 Defendants have, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by DTPA section 17.45(6).

VII. ACTS OF AGENTS

7.1 Whenever in this Petition it is alleged that any Defendants did any act, it is meant that:

A. Defendants performed or participated in the act; or

B. Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

VIII. NOTICE BEFORE SUIT

8.1 At least seven days prior to filing suit, Defendants were notified of the unlawful conduct alleged herein.

IX. NATURE OF DEFENDANTS' OPERATIONS

9.1 Defendants operate tanning facilities providing indoor tanning services to the public within the State of Texas and Nationwide. Defendants' tanning facilities are regulated under the Tanning Facility Regulation Act, TEX. HEALTH & SAFETY CODE §§ 145.001-145.016 (Vernon 2001 & Supp. 2008). See specifically TEX. HEALTH & SAFETY CODE §§ 145.002(8). Defendants' tanning devices are also regulated under the Texas Food, Drug & Cosmetic Act, TEX. HEALTH & SAFETY CODE §§ 431.001 - 431.415 (Vernon 2001 & Supp. 2008).

9.2 Defendants use ultraviolet lamps¹ for tanning to provide tanning services to consumers. Ultraviolet lamps for tanning are classified in 21 C.F.R. § 878.4635 ('ultraviolet lamp for tanning is a device . . . intended to . . . tan the skin.") and are solely classified for

¹By classification, ultraviolet lamps that produce ultraviolet radiation within a specific limit (21 C.F.R. §1040.20(11)) are intended for use in any sunlamp product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the human body to induce skin tanning (21 C.F.R. §1040.20(9)).

tanning the skin, nothing more. The Federal Food & Drug Administration ("FDA") classifies devices based on the intended use, as presented by the device manufacturer.

9.3 The FDA is solely responsible for classifying and approving devices after they determine whether they are safe and effective for their stated intended uses. The State, its agencies, and its courts cannot approve or authorize use of a device for an intended use different from that authorized by FDA.² Therefore, ultraviolet lamps for tanning are limited to the intended use of tanning the skin.

9.4 Defendants represent and advertise that the use of their tanning devices results in health or medical benefits, claiming that using their devices increases the amount of vitamin D absorbed by the users. Defendants also claim that "UVB from tanning converts cholesterol into vitamin D."

9.5 Defendants make the health or medical claim that indoor tanning increases the user's intake of vitamin D and that increased levels of vitamin D have been shown to reduce the incidence or risk of cancer. Defendants then make health or medical claims that using their tanning devices increases vitamin D levels, thereby reducing the user's risk of developing cancer. Defendants' agents have specifically made the following health or medical claims: (1) "[p]eople that have high levels of vitamin D . . . are not as likely to get cancer," and (2) "[s]o would you be more worried about the skin cancer on your arm and being able to have it laser cut out . . . or

² Section 521 of the Federal Food, Drug, and Cosmetic Act ("FFDCA"), 21 U.S.C. §360k(a), prohibits a state from establishing or continuing in effect any requirement (1) which is different from, or in addition to any requirement applicable under the FFDCA to the device, and (2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under the FFDCA.

would you rather have ovarian cancer that you can't get rid of and . . . people die from."

Defendants also make the health or medical claim that indoor tanning reduces the risk of breast cancer. See DARQUE TAN - BREAST CANCER RESEARCH - 60 SEC (<http://www.youtube.com/watch?v=RI3ddeSZ2sA>). See Exhibit A (attached).

9.6 Defendants' tanning devices have not been approved by the FDA for either delivering doses of vitamin D or reducing risk of cancer. Defendants cannot legally make claims of delivering doses of vitamin D or reducing risk of cancer as these claims change the intended use of the devices from the FDA approved use for tanning of the skin. Consequently, Defendants cannot legally use or advertise the use of their tanning devices for any purpose other than tanning the skin.

X. FALSE, MISLEADING OR DECEPTIVE ACTS

10.1 Defendants, as alleged above and detailed below, have in the course of trade and commerce engaged in practices declared unlawful by the DTPA. Such acts include:

A. Engaging in false, misleading, or deceptive acts or practices in the conduct of any trade or commerce, in violation of DTPA section 17.46(a);

B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of DTPA section 17.46(b)(5); and

C. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the

consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of DTPA section 17.46(b)(24).

XI. TEXAS HEALTH & SAFETY CODE VIOLATIONS

11.1 Ultraviolet lamps for tanning are “tanning devices” pursuant to section 145.002(7) of the Texas Health & Safety Code. Tanning devices under the Tanning Facility Regulation Act are also defined as devices under section 431.002(13) of the Texas Health and Safety Code.

11.2 Defendants’ tanning devices are also regulated under the Texas Food, Drug & Cosmetic Act, TEX. HEALTH & SAFETY CODE §§ 431.001 - 431.415 (Vernon 2001 & Supp. 2008). Under Texas Health & Safety Code section 431.002(13), a device is an instrument, apparatus, implement, machine, contrivance or other similar article, that is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or intended to affect the structure or any function of the body.

11.3 Texas Health & Safety Code section 145.007 (Vernon 2001) prohibits a tanning facility from claiming or distributing promotional materials claiming that using a tanning device will result in medical or health benefits. Defendants have violated this provision by claiming and/or distributing materials claiming that using a tanning device increases the users intake of vitamin D. Defendants have further violated this provision by stating that the use of their tanning devices will reduce the consumer’s incidence or risk of cancer.

11.4 Texas Health & Safety Code section 431.182(a) states that an advertisement of a device is false if it is false or misleading in any particular. Defendants’ claims that its tanning devices deliver doses of vitamin D or reduce the risk of cancer are false or misleading in that the

FDA has only approved tanning devices for tanning the skin and not for these other intended uses. Therefore, Defendants' claims constitute false advertisements under Texas Health & Safety Code section 431.182(a).

11.5 Defendants' claims that their tanning devices deliver doses of vitamin D or reduce the risk of cancer violate Texas Health & Safety Code section 431.021(f) which prohibits the dissemination of any false advertisement.

11.6 Section 431.112(e) of the Texas Health & Safety Code states that a device shall be deemed to be misbranded unless its labeling bears adequate directions for use. Adequate directions for use cannot be written for Defendants' advertised uses of the tanning devices since these devices are not approved to deliver doses of vitamin D or reduce the risk of cancer. Because adequate directions for use cannot be written for Defendants' tanning devices for these unapproved uses, these devices are deemed misbranded pursuant to section 431.112(e) of the Texas Health & Safety Code.

11.7 Defendants' false or misleading advertising of devices for unapproved uses misbrands the devices in commerce under section 431.021(b) of the Texas Health and Safety Code. In addition, Defendants' use of such misbranded devices to provide tanning of the skin result in the introduction into commerce of misbranded devices pursuant to section 431.021(a) of the Texas Health and Safety Code.

XII. INJURY TO CONSUMERS

12.1 Defendants have, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored.

XIII. CONDITIONS' PRECEDENT

13.1 All conditions precedent to Plaintiff's right to recover and Defendants' liability have occurred or have been waived.

XIV. JURY TRIAL

14.1 Plaintiff herein requests a trial by jury.

XV. APPLICATION FOR PERMANENT INJUNCTION

15.1 Plaintiff requests that this Court permanently enjoin Defendants from representing, marketing, promoting, distributing, advertising or allowing or causing others to represent, market, promote, distribute, or advertise, their tanning devices:

- A. As a means or method of reducing any health risks or affecting any medical conditions;
- B. As a means or method to prevent or reduce the incidences or degree of any cancers;
- C. As a means or method by which consumers can safely increase their exposure to vitamin D or increase their levels of vitamin D;
- D. As anything other than devices to tan the skin;
- E. Without disclosing that the only use for tanning devices authorized by FDA is to tan the skin;
- F. For uses not included by classification by the FDA and misbrand the devices; and
- G. In any manner that results in the dissemination of false advertising of a device.

XVI. PRAYER

16.1 Plaintiff hereby incorporates paragraph 15.1, as if set forth in full.

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Plaintiff's Original Petition and Application for Permanent Injunction

16.2 Plaintiff State of Texas further respectfully prays that this Court:

A. Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses;

B. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of up to \$20,000 per violation of the DTPA;

C. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of up to \$25,000 per day for each violation of the Texas Health & Safety Code (See TEX. HEALTH & SAFETY CODE §§ 145.0121(b), 431.0585(b));

D. Order Defendants to pay Plaintiff State of Texas' reasonable attorney fees, investigative costs for the Office of the Attorney General and the Texas Department of State Health Services, court costs, witness fees, and other expenses pursuant to the TEX. GOV'T CODE § 402.006(c) and TEX. HEALTH & SAFETY CODE §§ 145.0121, 431.047(d).

E. Order Defendants to pay both pre-judgment and post judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and

F. Grant any further relief, at law or in equity, to which Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

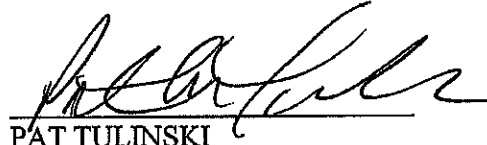
KENT C. SULLIVAN
First Assistant Attorney General

State v. Darque Tan, LLC, et al.

Plaintiff's Original Petition and Application for Permanent Injunction

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection & Public Health Division



PAT TULINSKI
SBN 20283485
Assistant Attorney General
Consumer Protection & Public Health Division
Capitol Station, P.O. Box 12458
Austin, Texas 78711-2548
Tel: (512) 463-2185
Fax: (512) 473-8301

Attorneys for Plaintiff

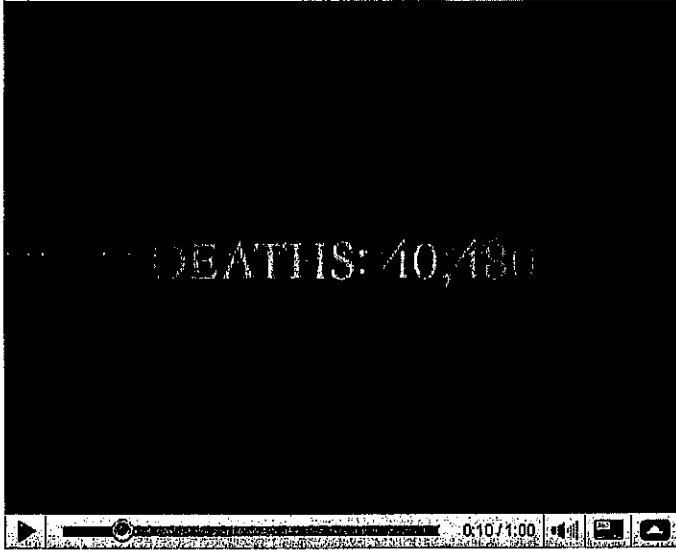
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Darque Tan - Breast Cancer Research - 60 sec



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From: DarqueTanCorp [Subscribe](#)
Added: September 21, 2008
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Help promote Vitamin D Breast Cancer Research. www.v...
URL: <http://www.youtube.com/watch?v=RI3ddeSZ2sA>
Embed: `<object width="425" height="344"><param name="movie" value="http://www.youtube.com/watch?v=RI3ddeSZ2sA"></object>`

More From: DarqueTanCorp

	Darque Tan - Breast Cancer Research - 30 sec 00:31 From: DarqueTanCorp Views: 24
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EXHIBIT B

Filed
08 December 8 A9:43
Amalia Rodriguez-Mendoza
District Clerk
Travis District

NO. D-1-GV-08-002596

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
DARQUE TAN, LLC; SEGLER	§	
ENTERPRISES LTD.; ROBBIE	§	
SEGLER; MONICA JONES; and	§	
JASON JONES,	§	
	§	
Defendants.	§	201st JUDICIAL DISTRICT

DEFENDANTS' ORIGINAL ANSWER

Pursuant to Texas Rule of Civil Procedure 92, Defendants Darque Tan, LLC, Segler Enterprises Ltd., Robbie Segler, Monica Jones and Jason Jones, hereby answer Plaintiffs' Original Petition and Application for Temporary Injunction ("Petition") as follows:

I. General Denial

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, and expressly reserving the right to plead any and all affirmative defenses in the future via an amended answer, Defendants Darque Tan, LLC, Segler Enterprises, Ltd., Robbie Segler, Monica Jones, and Jason Jones, generally deny each and every allegation in Plaintiff's Petition and demand strict proof of all matters set forth therein by a preponderance of the evidence, if Plaintiff is able.

II.

The individual Defendants are not liable in the capacity in which they have been sued.

Prayer

WHEREFORE, Defendants respectfully request that (1) Plaintiff State of Texas take nothing by way of its affirmative claims, (2) that Defendants receive their costs of court expended in this action, and (3) that Defendants receive any further relief, at law or in equity, to which they may be justly entitled.

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

/s/ Edward D. Burbach

Edward D. Burbach
State Bar No. 03355250
Robert F. Johnson III
State Bar No. 10786400
600 Congress Avenue, Suite 3000
Austin, Texas 78701
ph: (512) 542-7070
fax: (512) 542-7270
email: eburbach@gardere.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Pat Tulinski
Assistant Attorney General
Consumer Protection & Public Health Division
Capitol Station, P.O. Box 12458
Austin TX 78711-2548

/s/ Edward D. Burbach

EXHIBIT C

Filed
08 December 22 P12:25
Amalia Rodriguez-Mendoza
District Clerk
Travis District



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2008

Amalia Rodriguez-Mendoza
Travis County Courthouse
1000 Guadalupe St., 3rd Floor
Austin, TX 78701

Re: *State of Texas v. Darque Tan, LLC, et al.*; Cause No. D-1-GV-08-002596; in the 201st
Judicial District Court of Travis County, Texas.

Dear Ms. Rodriguez-Mendoza:

Please be advised that I will be out of the office on vacation from January 26, 2009 and will return to the office on February 2, 2009, and ask that the Court not schedule anything in this case during that time.

Thank you for your attention to this matter. If you have any questions, please contact me.

Sincerely,

Pat Tulinski
Assistant Attorney General
Consumer Protection and Public Health Division
Office of the Attorney General of Texas
Tel: (512) 463-2070
Fax: (512) 473-8301

cc: Edward D. Burbach
Gardere Wynne Sewell LLP
600 Congress Avenue, Suite 3000
Austin, TX 78701
Attorney for Defendants

POST OFFICE BOX 12548, AUSTIN, TEXAS 78711-2548 TEL: (512)463-2100

WEB: WWW.OAG.STATE.TX.US

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EXHIBIT D

Filed
10 June 2 A9:19
Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GV-08-002596

NO. D-1-GV-08-002596

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
DARQUE TAN, LLC; SEGLER	§	
ENTERPRISES LTD.; ROBBIE	§	
SEGLER; MONICA JONES; and	§	
JASON JONES,	§	
	§	
Defendants.	§	201 ST JUDICIAL DISTRICT

**NOTICE OF APPEARANCE OF COUNSEL AND
DESIGNATION OF ATTORNEY IN CHARGE**

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Texas Rule of Civil Procedure 8, Plaintiff hereby notifies the Court of the designation of JODIE SCIVETTI, Assistant Attorney General, as attorney in charge and counsel of record for the State, replacing PAT TULINSKI. There is no need to notify Pat Tulinski concerning any further activity in this case.

All counsel of record have been copied on this designation. The State requests that all future communications from the court or other counsel with respect to this action be addressed solely to the undersigned Assistant Attorney General.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER

First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

PAUL CARMONA
Chief, Consumer Protection & Public Health
Division

D. ESTHER CHAVEZ
Deputy Chief, Consumer Protection & Public
Health Division

JOYCE WEIN ILIYA
Section Chief, Public Health Litigation Section

/s/ Jodie Scivetti

Jodie Scivetti
Texas Bar No. 24058099
Assistant Attorney General
Office of the Texas Attorney General
Consumer Protection & Public Health Division
1412 Main Street, Ste. 810
Dallas, Texas 75202
(214) 969-7639, ext. 8826
Facsimile: (214) 969-7615
jodie.scivetti@oag.state.tx.us

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on June 2, 2010, a true and correct copy of the foregoing pleading was electronically filed and e-served on the following counsel:

Edward D. Burbach
GARDERE WYNNE SEWELL LLP
600 Congress Avenue, Suite 3000
Austin, Texas 78701
Tel. 512.542.7070
Fax 512.542.7270
eburbach@gardere.com

/s/ Jodie Scivetti

Jodie Scivetti

EXHIBIT E

Filed
10 September 21 A8:15
Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GV-08-002596

NO. D-1-GV-08-002596

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
DARQUE TAN, LLC; SEGLER	§	
ENTERPRISES LTD.; ROBBIE	§	
SEGLER, individually; TAN BIZ, LLC;	§	
MONICA JONES, individually; and	§	201ST JUDICIAL DISTRICT
JASON JONES, individually,	§	
Defendants.		

**PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION AND APPLICATION FOR
PERMANENT INJUNCTION**

TO THE HONORABLE DISTRICT JUDGE:

COMES NOW, the STATE OF TEXAS (Plaintiff), acting by and through the Attorney General of Texas, GREG ABBOTT, and on behalf of the Texas Department of State Health Services Commissioner, DAVID L. LAKEY, M.D., files this its First Amended Original Petition complaining of DARQUE TAN, LLC; SEGLER ENTERPRISES LTD.; ROBBIE SEGLER, individually; TAN BIZ, LLC; MONICA JONES, individually; and JASON JONES, individually (Defendants). For cause of action, the State respectfully shows the following:

I. DISCOVERY CONTROL PLAN

1.1 The discovery in this case is intended to be conducted under Level 2 pursuant to Tex. R. Civ. P. 190.3.

II. JURISDICTION

2.1 This action is brought by Attorney General GREG ABBOTT, through his Consumer

State v. Darque Tan, LLC, et al.
Plaintiff's First Amended Original Petition

Protection & Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by section 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§17.41 - 17.63 ("DTPA"), upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, DTPA sections 17.46(a) and (b).

2.2 This action is further brought by Attorney General GREG ABBOTT on behalf of the Texas Department of State Health Services Commissioner, DAVID L. LAKEY, M.D., upon the ground that Defendants have violated the Texas Health & Safety Code and referred the case to the Office of the Attorney General. See TEX. HEALTH & SAFETY CODE §§ 145.0121, 431.047, 431.0585 (Vernon 2001).

III. DEFENDANTS

3.1 Defendant **DARQUE TAN, LLC** is a Texas corporation with headquarters in Houston, Texas. Darque Tan, LLC is the General Partner of Segler Enterprises, LTD. It may be served through its **Registered Agent: Nicholas J. Lanza, 5177 Richmond, Suite 850, Houston, Texas 77056.**

3.2 Defendant **SEGLER ENTERPRISES, LTD.** is a Texas corporation d/b/a Darque Tan, with its headquarters in Houston, Texas. It may be served through its **Registered Agent: Nicholas J. Lanza, 5177 Richmond, Suite 850, Houston, Texas 77056.**

3.3 Defendant **ROBBIE SEGLER** is the Director, President, and Secretary of Darque Tan, LLC, and resides in Texas. He may be served at 5407 China Doll, Houston, Texas 77041.

3.4 Defendant **TAN BIZ, LLC** is a Texas Corporation d/b/a Darque Tan in the San Antonio area. It may be served through its **Registered Agent: Wilson, Bellamy, Brown & Wilson LLP at 3308 Broadway, Suite 300, San Antonio, Texas 78209.**

3.5 Defendant **MONICA JONES** is an individual residing in Texas and is a manager of Tan Biz, LLC. Monica Jones may be served at: 5002 Roundtable, San Antonio, Texas 78218.

3.6 Defendant **JASON JONES** is an individual residing in Texas and is a manager of Tan Biz, LLC. Jason Jones may be served at: 5002 Roundtable, San Antonio, Texas 78218.

IV. VENUE

4.1 Under Texas Health & Safety Code sections 145.0121(d) and 431.0585(d), venue is proper in Travis County, Texas.

V. PUBLIC INTEREST

5.1 Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe Defendants have caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. The Consumer Protection & Public Health Division of the Office of the Attorney General believes that these proceedings are in the public interest.

VI. TRADE AND COMMERCE

6.1 Defendants have, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by DTPA section 17.45(6).

VII. ACTS OF AGENTS

7.1 Whenever in this Petition it is alleged that any Defendants did any act, it is meant

that:

A. Defendants performed or participated in the act; or

B. Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

VIII. NOTICE BEFORE SUIT

8.1 At least seven days prior to filing suit, Defendants were notified of the unlawful conduct alleged herein.

IX. NATURE OF DEFENDANTS' OPERATIONS

9.1 Defendants operate tanning facilities providing indoor tanning services to the public within the State of Texas and Nationwide. Defendants' tanning facilities are regulated under the Tanning Facility Regulation Act, TEX. HEALTH & SAFETY CODE §§ 145.001-145.016 (Vernon 2001 & Supp. 2008). See specifically TEX. HEALTH & SAFETY CODE §§ 145.002(8). Defendants' tanning devices are also regulated under the Texas Food, Drug & Cosmetic Act, TEX. HEALTH & SAFETY CODE §§ 431.001 - 431.415 (Vernon 2001 & Supp. 2008).

9.2 Defendants use ultraviolet lamps¹ for tanning to provide tanning services to consumers. Ultraviolet lamps for tanning are classified in 21 C.F.R. § 878.4635 ('ultraviolet lamp for tanning is a device . . . intended to . . . tan the skin.") and are solely classified for tanning the skin, nothing more. The Federal Food & Drug Administration ("FDA") classifies devices based on the intended use, as presented by the device manufacturer.

¹By classification, ultraviolet lamps that produce ultraviolet radiation within a specific limit (21 C.F.R. §1040.20(11)) are intended for use in any sunlamp product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the human body to induce skin tanning (21 C.F.R. §1040.20(9)).

9.3 The FDA is solely responsible for classifying and approving devices after they determine whether they are safe and effective for their stated intended uses. The State, its agencies, and its courts cannot approve or authorize use of a device for an intended use different from that authorized by FDA.² Therefore, ultraviolet lamps for tanning are limited to the intended use of tanning the skin.

9.4 Defendants represent and advertise that the use of their tanning devices results in health or medical benefits. Some examples of claims made by the Defendants include:

- claiming that using their devices increases the amount of vitamin D produced by the users;
- claiming that five minutes in a tanning bed will produce as much vitamin D as is found in 20 cans of sardines and 40 glasses of milk;
- claiming that “UVB from tanning converts cholesterol into vitamin D;”
- using the phrase “Vitamin Darque” in promotional cards in which the Vitamin D portion of the phrase is in a different shade and font than the rest of the phrase; and
- linking websites containing articles on Vitamin D and making health and medical benefits claims for tanning to Defendants’ website.

² Section 521 of the Federal Food, Drug, and Cosmetic Act (“FFDCA”), 21 U.S.C. §360k(a), prohibits a state from establishing or continuing in effect any requirement (1) which is different from, or in addition to any requirement applicable under the FFDCA to the device, and (2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under the FFDCA.

9.5 Defendants DARQUE TAN, LLC; SEGLER ENTERPRISES LTD. and ROBBIE SEGLER, individually, have made the following additional claims:

- posting billboards which stated, “Get healthy, Get Darque, Get Vitamin D;”
- hanging “health claims” signs in their facilities which state: “As a tanning salon, our regulations prohibit us making or confirming any kind of health claims. To investigate the connection between vitamin D deficiency and disease, we recommend you Google™ vitamin D and/or consult a physician qualified in this field. What we can tell you is that tanning beds are one of the most reliable and controlled sources of natural vitamin D on the planet.”
- using the phrases “Vitamin Delivery,” “Vitamin Diva,” and “Vitamin Darque” in which the Vitamin D portion of the phrases are in a different shade and font than the rest of the phrase in posters and promotional cards; and
- placing copies of a magazine containing articles on Vitamin D on their tanning beds.

9.6 Defendants make the health or medical claim that indoor tanning increases the user’s intake of vitamin D and that increased levels of vitamin D have been shown to reduce the incidence or risk of cancer. Defendants then make health or medical claims that using their tanning devices increases vitamin D levels, thereby reducing the user’s risk of developing cancer. Defendants also make the health or medical claim that indoor tanning reduces the risk of breast cancer. Additionally, Defendants DARQUE TAN, LLC; SEGLER ENTERPRISES LTD. and ROBBIE SEGLER’s agents have specifically made the following health or medical claims in

comments to undercover news investigators: (1) “[p]eople that have high levels of vitamin D . . . are not as likely to get cancer,” and (2) “[s]o would you be more worried about the skin cancer on your arm and being able to have it laser cut out . . . or would you rather have ovarian cancer that you can’t get rid of and . . . people die from.”

9.7 Defendants also claim that by using their tanning beds one can safely achieve and maintain a tan.

9.8 Defendants’ tanning devices have not been approved by the FDA for either delivering doses of vitamin D or reducing risk of cancer. Defendants cannot legally make claims of delivering doses of vitamin D or reducing risk of cancer as these claims change the intended use of the devices from the FDA approved use for tanning of the skin. Consequently, Defendants cannot legally use or advertise the use of their tanning devices for any purpose other than tanning the skin.

9.9 Also, at inspections of DARQUE TAN, LLC; SEGLER ENTERPRISES LTD. and ROBBIE SEGLER’s various facilities, the Texas Department of State Health Services found Defendants advertising, giving away and/or offering to sell Vitamin D supplements. The supplements are advertised, presented and provided to consumers in bottles labeled with Darque Tan’s name.

X. FALSE, MISLEADING OR DECEPTIVE ACTS

10.1 Defendants, as alleged above and detailed below, have in the course of trade and commerce engaged in practices declared unlawful by the DTPA. Such acts include:

A. Engaging in false, misleading, or deceptive acts or practices in the conduct of any

trade or commerce, in violation of DTPA section 17.46(a);

B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of DTPA section 17.46(b)(5); and

C. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of DTPA section 17.46(b)(24).

XI. TEXAS HEALTH & SAFETY CODE VIOLATIONS

11.1 Ultraviolet lamps for tanning are “tanning devices” pursuant to section 145.002(7) of the Texas Health & Safety Code. Tanning devices under the Tanning Facility Regulation Act are also defined as devices under section 431.002(13) of the Texas Health and Safety Code.

11.2 Defendants’ tanning devices are also regulated under the Texas Food, Drug & Cosmetic Act, TEX. HEALTH & SAFETY CODE §§ 431.001 - 431.415 (Vernon 2001 & Supp. 2008). Under Texas Health & Safety Code section 431.002(13), a device is an instrument, apparatus, implement, machine, contrivance or other similar article, that is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or intended to affect the structure or any function of the body.

11.3 Texas Health & Safety Code section 145.007 (Vernon 2001) prohibits a tanning facility from claiming or distributing promotional materials claiming that using a tanning device

will result in medical or health benefits. Defendants have violated this provision by claiming and/or distributing materials claiming that using a tanning device increases the users intake of vitamin D. Defendants have further violated this provision by stating that the use of their tanning devices will reduce the consumer's incidence or risk of cancer.

11.4 Texas Health & Safety Code section 431.182(a) states that an advertisement of a device is false if it is false or misleading in any particular. Defendants' claims that its tanning devices deliver doses of vitamin D or reduce the risk of cancer are false or misleading in that the FDA has only approved tanning devices for tanning the skin and not for these other intended uses. Therefore, Defendants' claims constitute false advertisements under Texas Health & Safety Code section 431.182(a).

11.5 Defendants' claims that their tanning devices deliver doses of vitamin D or reduce the risk of cancer violate Texas Health & Safety Code section 431.021(f) which prohibits the dissemination of any false advertisement.

11.6 Section 431.112(e) of the Texas Health & Safety Code states that a device shall be deemed to be misbranded unless its labeling bears adequate directions for use. Adequate directions for use cannot be written for Defendants' advertised uses of the tanning devices since these devices are not approved to deliver doses of vitamin D or reduce the risk of cancer. Because adequate directions for use cannot be written for Defendants' tanning devices for these unapproved uses, these devices are deemed misbranded pursuant to section 431.112(e) of the Texas Health & Safety Code.

11.7 Texas Health & Safety Code section 145.007 (Vernon 2001) prohibits a tanning

facility from claiming or distributing promotional materials claiming that using a tanning device is safe. Defendants have violated this provision by claiming and/or distributing materials claiming that one can safely achieve and maintain a tan through the use of tanning devices.

11.8 Section 431.222(a) of the Texas Health & Safety Code states that a food manufacturer must apply for and obtain a license from, and pay a license fee to, the Texas Department of State Health Services for each place of business that the food manufacturer operates within Texas. Food manufacturer is defined in section 431.221(2) to include those who represent themselves as responsible for the purity and proper labeling of an article of food by labeling the food with the person's name and address. Section 431.021(y) of the Texas Health & Safety Code prohibits manufacturing food within Texas without obtaining a license.

11.9 Defendants DARQUE TAN, LLC; SEGLER ENTERPRISES LTD. and ROBBIE SEGLER violate section 431.021(y) of the Texas Health & Safety Code by manufacturing Vitamin D supplements without a license from TDSHS.

11.10 Section 431.082(a) of the Texas Health & Safety Code states that a food is misbranded if its labeling is false or misleading in any particular or fails to conform with the requirements of section 431.181 of the Texas Health & Safety Code which addresses fair packaging and labeling. Section 431.021(a) of the Texas Health & Safety Code prohibits the introduction or delivery for introduction of any misbranded food into commerce. Defendants DARQUE TAN, LLC; SEGLER ENTERPRISES LTD. and ROBBIE SEGLER violate section 431.021(a) by failing to follow the requirements for the supplement facts panel.

XII. INJURY TO CONSUMERS

12.1 Defendants have, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored.

XIII. CONDITIONS PRECEDENT

13.1 All conditions precedent to Plaintiff's right to recover and Defendants' liability have occurred or have been waived.

XIV. APPLICATION FOR PERMANENT INJUNCTION

14.1 Plaintiff requests that Defendants DARQUE TAN, LLC; SEGLER ENTERPRISES LTD.; ROBBIE SEGLER, individually; TAN BIZ, LLC; MONICA JONES, individually; and JASON JONES, individually, be cited according to law to appear and answer herein and that upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendants individually and by their agents, servants, employees, and representatives from making the representations, doing the acts, and engaging in the practices set out in the preceding paragraphs as well as from making the following representations and doing the following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas as follows:

- A. Representing, marketing, promoting, or advertising, either expressly or by implication through any means, tanning devices or any services associated with the use of tanning devices as a means or method of reducing any health risks or affecting any medical conditions;
- B. Representing, marketing, promoting, or advertising, either expressly or by

implication through any means, tanning devices or any services associated with the use of tanning devices as a means or method to prevent or reduce the incidences or degree of any cancers;

- C. Representing, marketing, promoting, or advertising, either expressly or by implication through any means, tanning devices or any services associated with the use of tanning devices as a means or method by which consumers can increase their exposure to vitamin D or increase levels of vitamin D or any similar type claim;
- D. Representing, marketing, promoting, or advertising, either expressly or by implication through any means, tanning devices as anything other than devices to tan the skin;
- E. Representing, marketing, promoting, or advertising tanning devices without disclosing that the only use for tanning devices authorized by the FDA is to tan the skin;
- F. Representing, marketing, promoting, or advertising, either expressly or by implication through any means, that one can safely achieve a tan or safely tan through the use of tanning device;
- G. Using any internet search parameters, such as metatags, search and source codes, to link those searching for Vitamin D, Vitamin D production; cancer prevention, breast cancer, or any other health related subject to Defendants' website(s);
- H. Misbranding devices in commerce;

- I. Including any statement, claim, research, or link to research or other websites on their website or in any other advertisement which implies, either directly or indirectly, that tanning devices are a means or method of reducing any health risks or affecting any medical conditions;
- J. Including any statement, claim, research, or link to research or other websites on their website or in any other advertisement which implies, either directly or indirectly, that tanning devices are a means or method to prevent or reduce the incidences or degree of any cancers;
- K. Including any statement, claim, research, or link to research or other websites on their website or in any other advertisement which implies, either directly or indirectly, that tanning devices are a means or method by which consumers can increase their exposure to vitamin D or increase levels of vitamin D;
- L. Including any statement, claim, research, or link to research or other websites on their website or in any other advertisement which implies, either directly or indirectly, that tanning devices are anything other than devices to tan the skin;
- M. Manufacturing food, including dietary supplements, within this state without being licensed with the Texas Department of State Health Services as a food manufacturer;
- N. Disseminating any false advertisements;
- O. Advertising or representing, through any means, the availability of any type of Vitamin D at any of their facilities unless it is clearly and conspicuously disclosed

that the Vitamin D is obtained solely through the ingestion of a dietary supplement;

- P.** Using any type of subterfuge or pretense in any advertisement or representation to mislead consumers into thinking tanning devices can be used for anything other than tanning of the skin;
- Q.** Failing to comply with all of the requirements for the operation of tanning facilities;
- R.** Failing to comply with all of the labeling requirements for dietary supplements;
- S.** Representing that their business is approved by the Texas Department of State Health Services;
- T.** Representing that their business is approved by the Office of the Attorney General; and
- U.** Failing to provide written notice to any agent, servant, employee, affiliate, representative, franchisee, or licensee of the existence and terms of any injunction entered in this case, and of their duty to comply with the terms set forth herein.

XV. PRAYER

15.1 Plaintiff hereby incorporates paragraph 14.1, as if set forth in full.

15.2 Plaintiff State of Texas further respectfully prays that this Court:

A. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of up to \$20,000 per violation of the DTPA;

B. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the

amount of up to \$25,000 per day for each violation of the Texas Health & Safety Code (See TEX. HEALTH & SAFETY CODE §§ 145.0121(b), 431.0585(b));

C. Order Defendants to pay Plaintiff State of Texas' reasonable attorney fees, investigative costs for the Office of the Attorney General and the Texas Department of State Health Services, court costs, witness fees, and other expenses pursuant to the TEX. GOV'T CODE § 402.006(c) and TEX. HEALTH & SAFETY CODE §§ 145.0121, 431.047(d).

D. Order Defendants to pay both pre-judgment and post judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and

E. Grant any further relief, at law or in equity, to which Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

PAUL D. CARMONA
Chief, Consumer Protection & Public Health Division

D. ESTHER CHAVEZ
Deputy Chief, Consumer Protection & Public Health
Division

/s/ Jodie Scivetti
JODIE SCIVETTI
SBN 24058099
Assistant Attorney General
JOYCE WEIN ILIYA
SBN 00784319
Assistant Attorney General
Consumer Protection & Public Health Division
1412 Main Street, Suite 810
Dallas, Texas 75202
Tel: (214) 969-7639, ext. 8826
Fax: (214) 969-7615

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *State's First Amended Original Petition and Application for Permanent Injunction* was electronically filed with the Clerk of Court and a true and correct copy was e-served and served by certified mail return receipt requested on all Defendants by and through their attorney of record, Edward D. Burbach on this 21st day of September, 2010.

/s/ Jodie Scivetti
Jodie Scivetti

EXHIBIT F

EXHIBIT G

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

THE STATE OF TEXAS

Plaintiff,

VS.

DARQUE TAN, LLC; SEGLER ENTERPRISES LTD.; ROBBIE SEGLER, individually; TAN BIZ, LLC; MONICA JONES, individually; and JASON JONES, individually

CIVIL ACTION NO. _____

JURY DEMANDED

Defendants.

LIST OF COUNSEL OF RECORD

Jodi Scivetti
Assistant Attorney General
Joyce Wein Iliya
Assistant Attorney General
Consumer Protection & Public Health Division
1412 Main Street, Suite 801
Dallas, Texas 75202
Ph: (214) 969-7639
Fax: (214) 969-7615
COUNSEL FOR PLAINTIFF,
THE STATE OF TEXAS

Edward D. Burbach
Gardere Wynne Sewell LLP
600 Congress Avenue, Suite 3000
Austin, Texas 78701
Ph: (512) 542-7070
Fax: (512) 542-7270
COUNSEL FOR DEFENDANTS
DARQUE TAN, LLC et al.

EXHIBIT H

Case:D-1-GV-08-002596 with (13) documents

Filed Date	Category	Description	Additional Info
11/10/2008	PET-PL	ORIGINAL PETITION/APPLICATION	PLAINTIFFS ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION
		Judges Notes/Comments	
11/10/2008	PET-PL	ORIGINAL PETITION/APPLICATION	PLAINTIFFS ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION
11/25/2008	SRV/PROCESS	EXE SERVICE OF CITATION	ROBBIE SEGLER
12/8/2008	ANS-RESP	ORIGINAL ANSWER	DEFENDANTS' ORIGINAL ANSWER
12/4/2008	SRV/PROCESS	EXE SERVICE OF CITATION	MONICA JONES
12/4/2008	SRV/PROCESS	EXE SERVICE OF CITATION	JASON JONES
12/22/2008	OTHER	LETTER	LETTER
3/12/2009	SRV/PROCESS	EXE SERVICE OF CITATION	SEGLER ENTERPRISES LTD
3/12/2009	SRV/PROCESS	EXE SERVICE OF CITATION	DARQUE TAN LLC
6/2/2010	NOTICE	NTC:ATTORNEY/COUNSEL	NOTICE OF APPEARANCE OF COUNSEL AND DESIGNATION OF ATTORNEY IN CHARGE
9/21/2010	PET-PL	AMENDED PETITION	PLAINTIFFS FIRST AMENDED ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION
10/11/2010	SRV/PROCESS	WAIVER OF CITATION OR SERVICE	WAIVER OF CITATION

EXHIBIT I

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GV-08-002596

137853.5

THE STATE OF TEXAS

, Plaintiff

vs.

DARQUE TAN, LLC; SEGLER ENTERPRISES LTD.; ROBBIE SEGLER; MONICA JONES; AND JASON JONES

, Defendant

TO: ROBBIE SEGLER
DIRECTOR, PRESIDENT, AND SECRETARY OF DARQUE TAN, LLC
5407 CHINA DOLL
HOUSTON, TEXAS 77041

Filed in The District Court
of Travis County, Texas
NOV 25 2008 CLC
10:09 A.M.
Amalia Rodriguez-Mendoza, Clerk

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION of the PLAINTIFF in the above styled and numbered cause, which was filed on NOVEMBER 10, 2008 in the 201ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, November 10, 2008.

REQUESTED BY:
PAT TULINSKI
ASSISTANT ATTORNEY GENERAL
CONSUMER PROTECTION & PUBLIC HEALTH DIVISION
CAPITOL STATION, P.O. BOX 12458
AUSTIN, TEXAS 78711-2548
TELEPHONE: (512) 463-2185
FAX: (512) 473-8301

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701
ANDREA MEDRANO-CHAPA, Deputy

RETURN

Came to hand on the 13 day of November, 2008 at 6 o'clock P M., and executed at 5407 China Doll Houston TX 77041 within the County of Harris on the 14 day of November, 2008, at 11 o'clock A M., by delivering to the within named Robert Segler, each in person, a true copy of this citation together with the accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sworn to and subscribed before me this the

18 day of November, 2008.


Notary Public, THE STATE OF TEXAS

D-1-GV-08-002596

☒ Original

☐ Service Copy


Sheriff / Constable / Authorized Person

By: Leonardo Villegas

6CH 3838

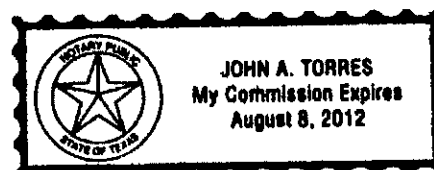
Printed Name of Server

Harris

County, Texas

SERVICE FEE NOT PAID

D01 - 33574



12/10/08

C I T A T I O N
T H E S T A T E O F T E X A S
C A U S E N O . D - 1 - G V - 0 8 - 0 0 2 5 9 6

137853.2

THE STATE OF TEXAS

, Plaintiff

vs.

DARQUE TAN, LLC; SEGLER ENTERPRISES LTD.; ROBBIE SEGLER; MONICA JONES; AND JASON JONES

, Defendant

TO: MONICA JONES
5002 ROUNDTABLE
SAN ANTONIO, TEXAS 78218

Defendant, in the above styled and numbered cause:

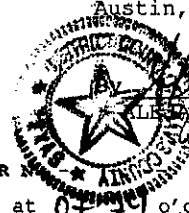
YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION of the PLAINTIFF in the above styled and numbered cause, which was filed on NOVEMBER 10, 2008 in the 201ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, November 10, 2008.

REQUESTED BY:
PAT TULINSKI
ASSISTANT ATTORNEY GENERAL
CONSUMER PROTECTION & PUBLIC HEALTH DIVISION
CAPITOL STATION, P.O. BOX 12458
AUSTIN, TEXAS 78711-2548
TELEPHONE: (512) 463-2185
FAX: (512) 473-8301

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701



ALEXANDRA MEDRANO-CHAPA, Deputy

R E T U R N

Came to hand on the 14th day of NOVEMBER, 2008 at 07:30 o'clock A.M., and executed at 5002 ROUNDTABLE DR, SAN ANTONIO, TX within the County of BEXAR on the 15th day of NOVEMBER, 2008, at 08:29 o'clock A.M., by delivering to the within named MONICA JONES, each in person, a true copy of this citation together with the accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sworn to and subscribed before me this the

17th day of NOVEMBER, 2008.

Notary Public, THE STATE OF TEXAS

By:

DAN BROWLETTE
Printed Name of Server

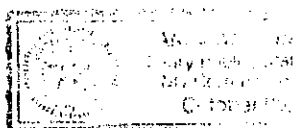
BEXAR

County, Texas

D-1-GV-08-002596

SERVICE FEE NOT PAID

D01 - 33575

☐ Original☐ Service Copy

RECEIVED BY
11-15-08
DATE



000783979

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GV-08-002596

1378533

THE STATE OF TEXAS

vs.

DARQUE TAN, LLC; SEGLER ENTERPRISES LTD.; ROBBIE SEGLER; MONICA JONES; AND JASON JONES

, Plaintiff

, Defendant

TO: JASON JONES
5002 ROUNDTABLE
SAN ANTONIO, TEXAS 78218

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION of the PLAINTIFF in the above styled and numbered cause, which was filed on NOVEMBER 10, 2008 in the 201ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, November 10, 2008.

REQUESTED BY:
PAT TULINSKI
ASSISTANT ATTORNEY GENERAL
CONSUMER PROTECTION & PUBLIC HEALTH DIVISION
CAPITOL STATION, P.O. BOX 12458
AUSTIN, TEXAS 78711-2548
TELEPHONE: (512) 463-2185
FAX: (512) 473-8301

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701



ALEJANDRA MEDRANO-CHAPA, Deputy

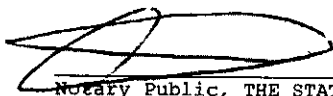
RETURN

Came to hand on the 14TH day of NOVEMBER, 2008 at 07:24 o'clock A.M., and executed at 5002 ROUNDTABLE DR, SAN ANTONIO, TX within the County of BEXAR on the 15TH day of NOVEMBER, 2008, at 08:29 o'clock A.M., by delivering to the within named JASON JONES, each in person, a true copy of this citation together with the accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sworn to and subscribed before me this the

17TH day of NOVEMBER, 2008.



Notary Public, THE STATE OF TEXAS


Sheriff / Constable / Authorized Person

By:

San Brouillette
Printed Name of Server

BEXAR

County, Texas

D-1-GV-08-002596

SERVICE FEE NOT PAID

D01 - 33576

☒ Original

☒ Service Copy

Jason Jones
RECEIVED BY
11-15-08
DATE

SEARCHED
SERIALIZED
INDEXED
FILED
OCT 20 2008
FBI - SAN ANTONIO



3/24/09

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GV-08-002596

137853.4

THE STATE OF TEXAS

vs.

DARQUE TAN, LLC; SEGLER ENTERPRISES LTD.; ROBBIE SEGLER; MONICA JONES; AND JASON JONES

TO: SEGLER ENTERPRISES, LTD.
DELIVERY THROUGH REGISTERED AGENT, NICHOLAS J. LANZA
5177 RICHMOND, SUITE 850
HOUSTON, TEXAS 77056

Filed in The District Court
of Travis County, Texas
BP MAR 12 2009
Amalia Rodriguez-Mendoza, Clerk

Defendant, in the above styled and numbered cause:

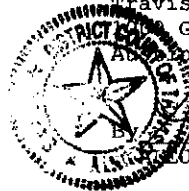
YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION of the PLAINTIFF in the above styled and numbered cause, which was filed on NOVEMBER 10, 2008 in the 201ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, November 10, 2008.

REQUESTED BY:
PAT TULINSKI
ASSISTANT ATTORNEY GENERAL
CONSUMER PROTECTION & PUBLIC HEALTH DIVISION
CAPITOL STATION, P.O. BOX 12458
AUSTIN, TEXAS 78711-2548
TELEPHONE: (512) 463-2185
FAX: (512) 473-8301

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701
GUANDRA MEDRANO-CHAPA, Deputy



--- -- -- -- -- RETURN --- -- -- -- --

Came to hand on the 13 day of November, 2008 at 3:00 o'clock P M., and executed at 5177 Richmond, Suite 850, Houston, Tx 77056 within the County of Harris on the 14 day of November, 2008, at 10:30 o'clock A M., by delivering to the within named Segler Enterprises, Ltd, by delivering them to its Registered Agent, Nicholas J. Lanza each in person, a true copy of this citation together with the accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sworn to and subscribed before me this the

15 day of November, 2008.

Erik Campos
Notary Public, THE STATE OF TEXAS

Shayma Chacon int 2516
Sheriff / Constable / Authorized Person

By: Shayma Chacon
Shayma Chacon
Printed Name of Server

Harris County, Texas

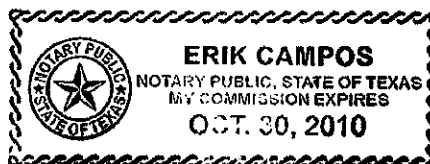
D-1-GV-08-002596

SERVICE FEE NOT PAID

D01 - 33573

☒ Original☒ Service Copy

000897557



3/24/09

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GV-08-002596

THE STATE OF TEXAS

vs.

DARQUE TAN, LLC; SEGLER ENTERPRISES LTD.; ROBBIE SEGLER; MONICA JONES; AND JASON JONES

TO: DARQUE TAN, LLC
DELIVERY THROUGH REGISTERED AGENT, NICHOLAS J. LANZA
5177 RICHMOND, SUITE 850
HOUSTON, TEXAS 77056

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION of the PLAINTIFF in the above styled and numbered cause, which was filed on NOVEMBER 10, 2008 in the 201ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, November 10, 2008.

REQUESTED BY:
PAT TULINSKI
ASSISTANT ATTORNEY GENERAL
CONSUMER PROTECTION & PUBLIC HEALTH DIVISION
CAPITOL STATION, P.O. BOX 12458
AUSTIN, TEXAS 78711-2548
TELEPHONE: (512) 463-2185
FAX: (512) 473-8301

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
200 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701



By: JEJANDRA MEDRANO-CHAPA, Deputy

--- -- -- -- -- RETURN --- -- -- -- --

Came to hand on the 13 day of November, 2008 at 3:00 o'clock P M., and executed at 5177 Richmond, Suite 850, Houston, Tx, 77056 within the County of Harris on the 14 day of November, 2008, at 10:30 o'clock A M., by delivering to the within named Darque Tan, LLC by delivering them to its Registered Agent, Nicholas J. Lanza, each in person, a true copy of this citation together with the accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sworn to and subscribed before me this the

15 day of November, 2008.

Erik Campos
Notary Public, THE STATE OF TEXAS

Shayma Chacon 5-11-2016
Sheriff / Constable / Authorized Person

By: Shayma Chacon

Shayma Chacon
Printed Name of Server

Harris County, Texas

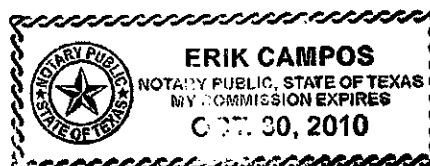
D-1-GV-08-002596

SERVICE FEE NOT PAID

D01 - 33571

☐ Original☐ Service Copy

000897555



137853.1
Filed in The District Court
of Travis County, Texas
BP MAR 12 2009
At Amalia Rodriguez-Mendoza, Clerk